

# THE CORPORATION JOURNAL

(REGISTERED U. S. PAT. OFFICE)

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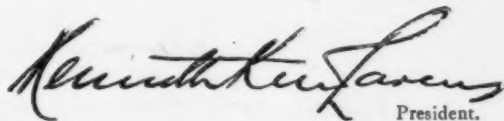
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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

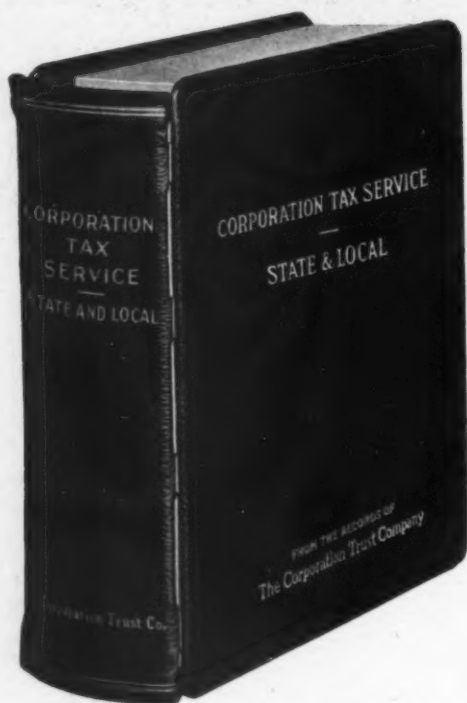
*The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.*

## The Corporation Tax Service State and Local

On page 389 of this number of The Corporation Journal will be found an article dealing with this company's new loose-leaf service,—The Corporation Tax Service, State and Local. This service is designed primarily for the use of attorneys for corporations, corporation officials, accountants and others who find it necessary to have at hand easily accessible and up to the minute information regarding franchise taxes, income taxes, general property taxes and other additional taxes and reports, the payment and filing of which at the proper time is necessary to maintain the corporation's statutory standing. Further information in connection with this service may be had at any of the offices of The Corporation Trust Company.



President.



This newest of The Corporation Trust Company's Services covers every state and local tax payable by ordinary business corporations, in every state. It is kept constantly up to date. Each subscriber may select the states, and in each state the city, which he desires to have covered in his Service and the subscription price is based on the number so selected. Write today for complete information.

# THE CORPORATION JOURNAL

*Edited by John H. Sears of the New York Bar*

VOL. VII, No. 155

MAY, 1927

PAGES 385-408

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost (\$2) and thereafter each copy will be punched to fit the binder.

The Corporation Trust Company, publisher of the Journal, was founded in 1892 to gather and compile for lawyers official information in regard to the laws, regulations, court decisions and local practice in various states relating to the organization, qualification, taxation and maintenance of business corporations; and to assist attorneys in the details of organization or qualification in any state.

For the conduct of this branch of its business the company now has offices and representatives in every state and territory of the United States and in every province of Canada. It furnishes complete and up to the minute information, precedents and assistance in drafting all required papers for incorporation or qualification in any state, territory or province, and under the attorney's direction performs all necessary steps, and furnishes the statutory office or agent required. This service is rendered to members of the bar only.

Because of the unique organization thus built up, especially trained and experienced in the gathering and furnishing of exact official information, it naturally fell to the lot of The Corporation Trust Company to originate and furnish, as they became needed, The Federal Tax, Federal Reserve Act, Federal Trade Commission, Supreme Court, and New York Tax Services; The Corporation Tax Service, State and Local; The Stock Transfer Guide and Service (covering all requirements under the various state Inheritance Tax and Federal Estate Tax Laws, the various state probate laws, and the Uniform Requirements of the New York Stock Transfer Association, relating to the transfer of corporation securities); The Congressional Service (covering proposed legislation in Congress); and special services to lawyers and their clients having business to take up with committees, commissions, boards or officials at Washington.

Incorporated under the banking law of the State of New York, and its affiliated company incorporated under the trust company law of the State of New Jersey, the company is also qualified to act for corporations as Transfer Agent or Registrar of their securities, or as Trustee, Custodian of Securities, Escrow Depositary, or Depositary for Reorganization Committees. As an adjunct to these services it also assists counsel in procuring the listing of securities on the New York Stock Exchange.

Details of any of these services will gladly be furnished at any of the company's offices.

# THE CORPORATION TRUST COMPANY

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Having offices and representatives in every state and territory of the United States and every province of Canada and a large, trained organization at Washington, this company —

Being incorporated under the Banking Law of New York, and its affiliated company incorporated under the Trust Company Law of New Jersey, the combined assets always approximating a million dollars, this company —

—furnishes attorneys with complete, up to date information and precedents for drafting all papers for incorporation or qualification in any jurisdiction;

—files for attorneys all papers, holds incorporators' meetings, and performs all other steps necessary for incorporation or qualification in any jurisdiction;

—furnishes, under attorney's direction, the statutory office or agent required for either domestic or foreign corporation in any jurisdiction;

—keeps counsel informed of all state taxes to be paid and reports to be filed by his client corporation in the state of incorporation and any states in which it may qualify as a foreign corporation;

—acts as Transfer or Co-Transfer Agent or Registrar for the securities of corporations;

—acts as Trustee, Custodian of Securities, Escrow Depositary, or Depositary for Reorganization Committees;

—naturally (as a result of the great organization and facilities thus maintained) and necessarily (because of the important functions it performs for lawyers) keeps constantly informed of the official matters—legislation, court decisions, and the rulings and regulations of various governmental bodies—which relate to taxation, transfers of securities, regulation of business activities, etc., and furnishes such information, where desired, on an annual basis in the form of the following Services:—

The Federal Tax Service  
Corporation Tax Service, State and Local  
New York Tax Service  
Congressional Legislative Service  
Federal Reserve Act Service  
Supreme Court Service  
Federal Trade Commission Service  
Stock Transfer Guide and Service

## The Corporation Tax Service

### State and Local

Attorneys for corporations, corporation officials and accountants are familiar with the fact that it is often difficult to keep advised of matters in connection with franchise taxes, income taxes, general property taxes, and other additional taxes and reports, which it is extremely necessary that the corporation give attention to at the proper time (not only in one state but many) in order to maintain the corporation's statutory standing.

Having this in mind The Corporation Trust Company has compiled the loose-leaf state and local tax service in order that persons charged with these matters may have before them in simple form the necessary information.

The tax laws of the various states are far from uniform, so that what may apply to one state would have no application whatever to another. Take property taxes for instance. There are broadly speaking, three different types of laws.

The first is where the law provides for an assessment to be made for state, county, city and all other local purposes and only one collection is made for all. This is the ideal type, examples of which are the laws of Ohio and New Jersey.

The second type is where the state law makes complete provision for

the assessment and collection of state and county property taxes and also complete and separate provision for the assessment and collection of city and town property taxes. Examples: Pennsylvania and Kentucky.

The third is where complete provision is made for the assessment and collection of state and county property taxes, but cities are permitted by charter to adopt their own assessment system and to vary them by ordinance. Example: New York.

In view of these variations and differences it can readily be seen that the proper, convenient and useful way to have at hand at all times, up to the minute information covering these various state laws, is through the use of The Corporation Tax Service, State and Local, in which the subscriber will have ready access to the statutes, court decisions and other necessary information regarding a particular state. Through its use the corporation will be enabled to pay all taxes and file all reports at the proper times and eliminate any possibility of the imposition of the statutory penalties.

Additional information regarding this service may be had at any of the offices of The Corporation Trust Company.

## Domestic Corporation

### Delaware.

**Directors cannot act by proxy.** The instant case involves two meetings of directors at both of which a bond issue secured by a mortgage was assumed to be authorized. At the later meeting, only one director was present in person, the other two being represented by proxies. This meeting assumed to rescind the earlier resolution and to adopt in its stead another authorizing a bond issue and mortgage, the only difference being in the designation of the trustee. The mortgage was executed with the trustee named at the second meeting acting and the bonds which are the basis of the claims in this action issued. The Court of Chancery of Delaware in this connection says that directors of a corporation cannot act by proxy and for this reason the second meeting was an unlawful one. Not only was the action in authorizing the bonds and mortgage invalid, but so also for the same reason was its action rescinding the first resolution invalid. As to the legality of the bonds the court says that the substitution of the trustee, even though not formally authorized by the directors, is a circumstance of no material moment and this was the only difference in the resolutions. The company recognized the bonds not only by their formal issuance and delivery, but when issued by paying interest upon them. In re Acadia Dairies, Inc., 135 Atl. 846. Henry R. Isaacs and Benjamin T. Biggs, both of Wilmington, for exceptants. David J. Reinhardt, of Wilmington, for claimants. J. Frank Biggs, of Wilmington, for receiver.

### Kentucky.

#### **Right to stock dividend as between life tenant and remainderman.**

In an action involving the right to a stock dividend as between the life tenant and remainderman, the Court of Appeals of Kentucky says that the general question of the right to stock dividends as between life tenant and remaindermen has caused the courts some trouble, resulting in three different views of the law. One rule is known as the Massachusetts rule, another as the Pennsylvania rule, and the third as the Kentucky rule. It is the settled law of Kentucky that as between a life tenant and remainderman, all dividends, whether paid in stock or cash, declared out of earnings, belong to the life tenant. If, instead of allowing this surplus to accumulate, the Mt. Sterling National Bank had paid a semiannual dividend of, say, 15 per cent. or 20 per cent., no one would ever have suggested that the money did not belong to the life tenant. So what difference can it make if, instead of paying out its earnings in dividends, it allows its earnings to accumulate, and then, instead of distributing them in money, it issued a stock dividend to represent this accumulation. Goff et al. v. Evans, 290 S. W. 490. J. Smith Hays, of Winchester, and Talbott & Whitley, of Paris, for appellant. Benton & Davis, of Winchester, for appellee.

**Maine.**

**Rights of minority stockholders.** In an appeal from a decree dismissing a petition under the Minority Stockholders Act, the Supreme Judicial Court of Maine says that conferring rights, the act provides in effect that, in the instance of a solvent going corporation, the majority stockholders whereof have voted to sell its entire property, otherwise than in the ordinary and usual course of business, any minority stockholder who voted in the negative on the proposition of selling may, after the filing of written dissent, if the corporation does not petition, himself petition for the corporation to pay the value of his shares, as the same shall be judicially determined. Notwithstanding that he voted differently, the minority stockholder will be bound by the majority decision, unless he confirm his preference by writing. On petition and hearing, it is for the court to fix a valuation on the minority stock, and give judgment. When the judgment is satisfied, the stock passes to the corporation, and the stockholder retires. The remedy rests wholly upon the statute, and is enforceable only on making evident that conditions precedent had been observed. First, it must be established that on the proposal to sell he who invokes relief voted in the negative. The minority stockholder, or his proxy, must have done the active, positive thing of recording a vote against selling. That such vote was not recorded is the crux of this proceeding. *Johnson et al v. C. Brigham Co.*, 136 Atl. 456. *Harry R. Virgin*, of Portland, *Edward N. Chase*, of Boston, Mass., and *Freeman & Freeman*, of Portland, for plaintiffs. *Bradley, Linnell & Jones*, of Portland, and *John F. Cusick*, of Boston, Mass., for defendant.

**Massachusetts.**

**Ordinary business corporation cannot become surety.** The scope of the authority, powers and liability of a corporation is limited by the act creating it, and everyone dealing with it is presumed to know their extent. These powers include transactions "fairly incidental or auxiliary to the main business of the corporation and necessary or expedient in the protection, care and management of its property." In Massachusetts an ordinary business corporation cannot become surety for another corporation or an individual in a matter not connected with the purposes for which it was created, and for which the corporation has received nothing in money or property; and a guaranty in such a matter is held to be the exercise of a power not conferred, even though certain benefits to the corporation were expected to result from the transaction and the other party has incurred expenses on the faith of the guaranty. In connection with the present case the Supreme Judicial Court of Massachusetts says that on the face of the bond the transaction purported to be one in which the defendant was undertaking to be responsible for the obligations of the sales company, and, upon the facts found, the defendant in signing the application and bond was exercising a power not conferred upon it. *Commercial Casualty Ins. Co. v. Daniel Russell Boiler Works, Inc.*



155 N. E. 422. C. C. Steadman of Boston, for appellant. J. M. Raymond, of Boston, and E. L. Twomey, of Worcester, for appellee.

### Michigan.

**Annual reports.** The Michigan Legislature has passed Senate Enrolled Act No. 6, to remedy the situation created by the decision of the Supreme Court of Michigan in *Michael Mishke v. Eddy Realty Co.*, 210 N. W. 241, (reported in *The Corporation Journal*, November, 1926, page 259) with respect to past transactions. That decision held in effect that corporations were required to file two annual reports, one in compliance with Act 84 of the Public Acts of 1921 and the other in compliance with Act 85, and that the form issued by the Secretary of State fulfilled the requirements of Act 85 only. The Act referred to above cures omissions in the filing of annual reports by corporations for previous years and to validate business done and contracts entered into notwithstanding such omissions.

### New Jersey.

**Facsimile signature on stock certificates.** Pamphlet copies of **New Jersey Amendments.** Chapter 169, Laws of 1927, approved March 28, 1927, provides as follows: "Every stockholder shall have a certificate, signed by the president or a vice-president, and either the treasurer or an assistant treasurer, or the secretary or an assistant secretary, certifying the number of shares owned by him in such corporation, but where such certificate is signed by a transfer agent or an assistant transfer agent and a registrar the signatures of any such president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary may be facsimiles. All certificates heretofore issued, which are signed as aforesaid, shall be as valid and effectual for all purposes as if signed by the president and treasurer of the corporation."

The Corporation Trust Company has printed in pamphlet form all amendments to the New Jersey Corporation Law. Copies may be had at any of our offices.

**Uniform Stock Transfer Act.** Section 13 of the Uniform Stock Transfer Act (P. L. 1916, p. 398), which reads as follows: "No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined,"—is constitutional, and a sale of stock by the sheriff without seizure of the stock certificate confers no title on the purchaser, unless the certificate be surrendered to the issuing corporation or its transfer enjoined. With reference to the Uniform Stock Transfer Act the Court of Errors and Appeals of New Jersey says: "The Act is one of a number recommended by the American Bar Association to the various state Legislatures, and upon such sponsor it was adopted by our own Legislature. As its title indicates, its purpose is to make uniform the law of transfer



of shares of stock in corporations, and, as we think, to cover the range of title whereby this result could be effected. Shares of stock are now possibly the most widely prevalent form of title to joint interest in property, and their certificates are to the possessor the evidence of his right. As is commonly known, millions of shares are transferred daily from one owner to another, and in the stock exchanges of the country comprise perhaps the major part of their transactions. On small pieces of paper are written the evidence of fortunes. It is therefore of great importance that these titles should rest upon a sure foundation. It is to safeguard these that the act was passed, and, as declared in section 19, to make uniform the law of transfer with that of other states enacting it." *Wallach v. Stein*, 136 Atl. 209. William M. Atkinson, of Hoboken (David Bobker and Harry Unger, both of Newark, of counsel), for appellant. Philip J. Schotland, of Newark, for respondent.

#### **New York.**

**Bearer shares.** Chapter 387, Laws of 1927, in effect March 30, 1927, is new and provides that "bearer share" means the share or shares in a corporation, or company, organized under the laws of any state, territory, district or insular possession of the United States or under the laws of any foreign government, represented by an instrument or instruments lawfully issued by such corporation, or company, by the terms or effect whereof the bearer or holder thereof is entitled to the ownership of such share or shares. The term "bearer certificate" means any instrument or instruments representing a bearer share or shares. The term "bearer warrant" means any warrant, issued in connection with a bearer share, which by its terms or effect entitles the bearer or holder of such warrant to receive any dividend not theretofore payable or to receive further warrants for dividends. "Title to a bearer certificate and to the bearer share or shares represented thereby may be transferred in the same manner, with the same effect and subject to the same rights of rescission and with the same warranties as title to a certificate of stock issued to a specified person and endorsed by such person in blank may be transferred under the provisions of article six of this chapter, as such article was added by chapter six hundred of the laws of nineteen hundred and thirteen." Bearer warrants whether attached to or detached from the bearer share may be transferred in the same manner.

#### **Pennsylvania.**

**Liability on contract for nonissuance of stock where no corporation was organized.** This was an action to recover damages for breach of contract. Briefly, it was agreed a company should be organized to take over defendant's business and assets. Plaintiff was to receive the common stock and to assume the active management of the company. Defendant declined to proceed with the contract. No company was organized, and consequently no common or preferred stock was issued. The only question at issue in the court below was the

measure of damages plaintiff was entitled to receive to compensate him for defendant's failure to perform the obligations of the contract. The stock, not being in existence, had no market value. The Supreme Court of Pennsylvania on this says that plaintiff was not to be deprived of the value of his contract merely because the property he was to receive did not possess a market value. Where stock had been issued that has no market value, in an action on a contract to assess its value, the intrinsic or real worth would be the measure of damages. In an action to assess damages for breach of contract, which provided as one of the considerations common stock of a company to be organized, which was never done, the measure of damages would be the intrinsic or real value as of the date it should have been issued, and as though issued. This may be shown by evidence of the net worth of the assets, or by evidence of the net profit. The law does not require absolute accuracy in arriving at such value, but a reasonable degree of certainty, grounded on a definite basis, will suffice. *McWilliams v. Altemus*, 135 Atl. 856. Samuel L. Borton, of Philadelphia, for appellant. Joseph J. Brown and Henry P. Brown, both of Philadelphia for appellee.

## Foreign Corporations

### Louisiana.

**Federal courts not bound by rules of decision of state courts in suit against foreign corporation.** In an action against a foreign corporation, in the federal courts, it was contended that the federal courts must accept as a rule of decision the construction placed on a statute by the state court. On this the United States District Court (E. D. Louisiana) says that the decisions seem conclusive to the effect that state statutes, and the construction of such statutes by the courts of the state, shall not be regarded as rules of decision by courts of the United States held in such states; that legal service of process in a suit of which a court of the United States has jurisdiction may be made upon agents of a foreign corporation appointed or representing such corporation in the state, provided the foreign corporation is actually engaged in "doing business" within the state, and is represented by such an agent in the conduct of such business, or by one appointed pursuant to a state statute, making it amenable to suit. When these facts appear, the corporation is presumed to be present and therefore amenable to suit. It is immaterial whether such service is recognized as sufficient by the statutes or other judicial decisions of the state where the service is made. The court further says that it might also be assumed that the service would be held illegal and void under some construction by the state courts; none the less would the federal court be free to determine its own jurisdiction and refuse to accept either the statute or the local construction of it, because the state and federal courts derive their authority from dif-

ferent sources, and neither may expand or contract jurisdiction lawfully conferred on the other. *Chatters v. Louisville & N. R. Co.* et al, 17 F. (2d) 305. *George Piazza*, of New Orleans, for plaintiff. *Walter J. Suthon, Jr.*, of New Orleans, for defendants.

#### Maine.

**Foreign corporation held not to be "doing business."** In an action of assumpsit it became necessary to determine whether or not the defendant, a foreign corporation was "doing business" in Maine to such an extent as to warrant the inference that it was there present. In holding the corporation not "doing business" the United States District Court (D. Maine S. D.) holds (citing *Corpus Juris*) that a foreign corporation is not doing, carrying on, transacting or engaging in business in a state, within the meaning of the statutes, by merely appointing an agent for the transaction of future business therein, and further that it is well settled that engaging in litigation does not constitute doing business within the meaning of the constitutional and statutory provisions, against "doing business" in a state without compliance with the prescribed conditions, requirements, etc. The shipping of a small quantity of steel into the state was an act of interstate commerce, and is not to be construed as "doing business" and isolated sales or incidental transactions by a foreign corporation do not constitute "carrying on business." *Edward Sales Co. v. Harris Structural Steel Co., Inc.* 17 F. (2d) 155. *Clark Chapman*, of Portland, for plaintiff. *Cook, Hutchinson & Pierce*, of Portland, for defendant.

#### Mississippi.

**Service of summons on attorney of foreign corporation.** The Supreme Court of Mississippi in a recent decision says that service of summons on one who as attorney for a foreign corporation is suing on notes for it in the state is not such service on it as will give jurisdiction as the corporation by reason of suing on the notes is not found "doing business" in the state, and an attorney who is merely representing such foreign corporation in the collection of a debt in a court of the state is not an "agent" within the meaning of the statute. *Delta Ins. & Realty Agency et al. v. Fourth Nat. Bank of Montgomery, Ala.*, 111 So. 435. *S. L. Gwin* and *Simon Rosenthal*, both of Greenwood, for appellants. *Osborn & Witty* and *Gardner, Odom & Gardner*, all of Greenwood, for appellee.

#### North Carolina.

**Bringing suit and purchasing notes does not constitute "doing business."** The bringing of actions by a corporation created and organized under the laws of one state, in the courts of another state, to enforce collection of debts alleged to be due to such corporation from citizens and residents of the latter state, or the engaging in litigation with citizens and residents of such state, in its courts, does not constitute "doing business" in said state, within the meaning of the stat-

## Questions Like These—

Is it "unfair competition" for a business firm to give as part of its address, on stationery and in advertising a building bearing its own firm name, thus implying that it owns, controls or occupies an entire building when in fact it occupies only small rented quarters in the building at that address?

Is it "unfair competition" to use a corporate or trade name which indicates that the firm manufactures the goods it sells, when as a matter of fact it does not manufacture the goods but buys them for re-sale?

Is it "unfair competition" for a manufacturer to require dealers to contract not to sell competing lines before allowing them to purchase the manufacturer's line?

Is it "unfair competition" for a business firm to send

### VOLUME 1

**The Laws.**—The Federal Trade Commission Act, the Federal Anti-Trust Act (Clayton Act) and related laws, indexed.

**Rules and Rulings.**—The Commission's rules of practice, forms, conference rulings, and statements as to policy.

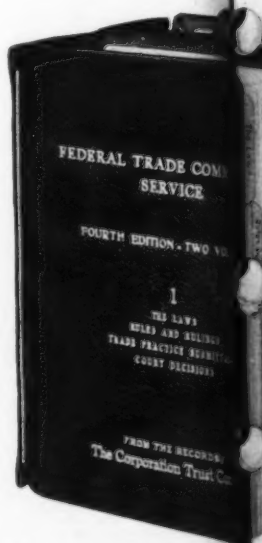
**Trade Practice Submittals.**—Reporting the conclusions of the representatives of trades and industries, agreed to in conferences with the Commission, as to unfair trade practices.

**Court Decisions.**—Reporting the full texts of all opinions in adjudications under the Federal Trade Commission Act and the Clayton Anti-Trust Act.

### VOLUME 2

**Docket of Complaints.**—Reporting every complaint issued by the Federal Trade Commission, including the date of issue, the name of the respondent complained against, a summary of the cause of complaint, the date of first hearing, and the final disposition of the complaint; indexed by names of respondents, by businesses engaged in by respondents, and by practices complained of.

**Stipulations.**—Reporting all rulings released by the Commission where the practice complained of and found to be unlawful has been discontinued by stipulation and without the formal issuance of a complaint; indexed by practices complained of.



dunning letters in the name of a wholly fictitious "collection agency?"

Is it "unfair competition" for a manufacturer to stress some certain ingredient of his product as a meritorious feature when that ingredient is not present in his product in sufficient proportion to add substantially to the product's value?

Is it "unfair competition" for a business firm to use in its advertising the expression "direct from factory to you" when it does not actually manufacture the goods it sells?

Is it "unfair competition" for a business firm to stamp upon its product, or print on the package, a supposed retail price that is higher than the actual price asked and more than the actual value of the product?

## -and the Many Other

similar questions raised or being raised in Federal Trade Commission proceedings are highly important to firms and individuals engaged in, or preparing to engage in, competitive interstate commerce. The Federal Trade Commission Service keeps you supplied throughout the year with the latest official information as to the answers being arrived at by the Commission and the courts.

utes so as to prohibit a foreign corporation from maintaining an action, because it is "doing business" in the state, without having complied with the provisions of the statute. The evidence in this case tends to show that the company, a New York corporation, was engaged in the business of purchasing notes, executed by purchasers of automobiles, in part payment of the purchase of, and secured by liens or chattel mortgages on, the automobile purchased; that these notes were purchased from dealers, residing and "doing business" in states other than New York; that the notes offered for sale by said dealers were sent to the corporation in New York, and there purchased or rejected as the corporation might determine in each instance; that the notes were payable in New York at the offices of the corporation. The Supreme Court of North Carolina, in holding this not "doing business" says that there is no evidence that any officer, agent or other person had purchased such notes in North Carolina, or has even come into the state for the purpose of purchasing such notes and the bringing of suits on the notes is not "doing business." *Commercial Investment Trust, Inc. v. Gaines*, 136 S. E. 609. *H. R. Stanley*, of Greensboro, for appellants. *Shuping & Hampton*, of Greensboro, for appellee.

#### **Texas.**

##### **Assignee of unqualified foreign corporation cannot recover on note.**

In an action on a note by the Southern Discount Company, it appeared that the note was given to the Johnson Acetelyne Gas Company, an unqualified foreign corporation, in payment for an acetelyne gas plant. If further appeared that the manner of selling, installing and making operative these plants by the Johnson Company, constituted "doing business" in Texas. The question therefore is whether the assignee of the unqualified foreign corporation "doing business" in the state could recover on the note. In holding that no recovery could be had the Court of Civil Appeals of Texas says that the fact that appellant's officials were fully acquainted with the nature of the gas company's business and its methods of conducting that business in Texas carries with it the necessary conclusion of law that appellant knew that, that business, being conducted by a foreign corporation operating within the state without a permit, was unlawful, and that its contracts, including this note arising therefrom, could not be enforced in the courts of the state. Having purchased the note with a knowledge of its invalidity in that respect, appellant was in the same position as its assignor, the payee, and was therefore not an innocent purchaser. *Southern Discount Co. v. Rose*, 290 S. W. 861. *Paul H. Brown*, of Karnes City, and *Chase Harding*, of Crawfordsville, Ind., for appellant, *J. R. Garnand* and *H. D. Barrow*, both of Jourdanton, for appellee.

#### **Virginia.**

**Foreign corporation held to be "doing business" carrying out construction contract.** The Supreme Court of Appeals of Virginia holds a foreign corporation to be "doing business" in the state in furnishing materials and construction according to specifications of cer-

tain additions to the gas plant of the city of Richmond. The court says that in the instant case, looking to the record as a whole, the contract was not for the sale of specific, definite personal property, simply to be transported, and then set up, or installed in place, but a contract to furnish the materials and build an addition to the gas plant of the city of Richmond, according to designated plans and specifications, and to connect it up with the existing plant and other machinery being contemporarily installed. *Western Gas Const. Co. v. Commonwealth*, 136 S. E. 646. John S. Brookes, Jr., of Pittsburgh, Pa., M. J. Fulton, of Richmond, and T. J. Michie, Jr., of Charlottesville, for appellant. John R. Saunders, Atty. Gen., for the Commonwealth.

## Taxation

### Maryland.

**Inheritance taxation on shares of corporation incorporated under the laws of two states.** In a case where the Northern Central Railway Company, a corporation incorporated under the laws of Maryland and Pennsylvania, declined to transfer shares in the name of a decedent without a Pennsylvania waiver, the Court of Appeals of Maryland says that the stock transfer under consideration is subject to taxation under the Pennsylvania statute. The situs of the stock, for taxation purposes, is in both of the states in which the corporation issuing the stock originated. The constitutional right of Pennsylvania to tax the transfer of stock of its corporate creature is not affected by the fact that a corporation, having a similar name and identical powers and property interests, was organized under the laws of Maryland, and that the principal office of the dual corporate organization is maintained in Baltimore. It is a necessary incident of the issue of stock by a corporation having a double or plural state origin that its transfer is susceptible to taxation by any or all of the incorporating sovereignties. The Pennsylvania law provides that the tax shall be payable on the clear value of the property transferred. This is the effect also of the Maryland law in regard to collateral inheritance taxes. But the omission of either state to provide a suitable apportionment of the value of the stock which both desire to assess for the purposes of inheritance transfer taxation does not impair the authority of either to make such exactions. *Northern Cent. Ry. Co. v. Fidelity Trust Co. et al.*, 136 Atl. 66. Bernard Carter & Sons and Shirley Carter, all of Baltimore, for appellant. Thomas A. Murray, of Baltimore (F. Murray Benson, of Baltimore, on the brief), for appellees.

### Massachusetts.

**Income tax: stock dividends.** The question for decision in the instant case is, How and when can it be determined for the purpose of taxation that a taxpayer has received gains over losses from a dec-



laration of a stock dividend or from a receipt and acquisition of such dividend. On this the Supreme Judicial Court of Massachusetts says that a mere declaration of a dividend is not a gain, as that word is used in the statute; and it is plain that the gain cannot be ascertained until there shall be a sale of the acquired stock. That stock received as a dividend may have a market value equally with original issues of stock would seem to be indisputable. The gain which comes to a holder of stock on sale of it is not necessarily the difference between money paid and cash received for it. The market value of the stock when received is presumptively the same whether the holder acquires title to it through a purchase or a gift, and the gain or loss on sale of it is determined commonly by the difference in its market value when received and the price obtained on its sale. The dividend of stock was a distribution of capital assets and the basis of determination of its value was the date it was acquired. It is alleged in each complaint and admitted by the demurrer that the value of the stock sold by the complainant was its value on the day it was received. It results that there was no gain to the complainants after the stock was acquired by them. *Parker v. Commissioner of Corporations and Taxation*, 155 N. E. 177. H. H. Gilman, of Boston, for petitioners. C. F. Lovejoy, Asst. Atty. Gen., for respondent.

#### New York.

**Section 270, Stamp Tax Law amended.** On page 376 of the April (1927) number of *The Corporation Journal* will be found a paragraph dealing with a bill introduced in the New York Legislature amending section 270 of the Stamp Tax Law. This bill is now law being Chapter 403, Laws of 1927, in effect on March 28, 1927 and retroactive to April 19, 1905. The amendment provides that it is not intended by the act to impose a tax "in respect to shares or certificates of stock, or certificates or rights to stock, or certificates of deposit representing certificates of the character taxed by this article, in any domestic association, company or corporation, even though a record of the transfer is made in the stock book kept in compliance with section ten of the stock corporation law, if neither the sale, nor the agreement to sell, nor the memorandum of sale, nor the delivery is made in this state and no act necessary to effect the transfer is done in this state."

#### Ohio.

**Book value of shares not "actual market value" for purpose of inheritance tax.** In an action relative to the determination of inheritance tax on the estate of a decedent it was contended that the book value of certain shares of stock in a close corporation should be taken and considered as its actual market value for the purpose of the tax. The Court of Appeals of Ohio (Cuyahoga County) in refusing to accept this says that if this were the rule to determine actual market value of stocks it would open the door to fraud and result in either excessive or low values in many instances. Actual market value does not depend upon one thing but many. The court upholds the value fixed by the

probate court and says that some of the facts disclosed by the evidence, which have aided in the judgment reached are: (a) The value and sale of stocks of a similar kind. (b) The activities of the corporation during the different periods of its existence. (c) Its earnings at the time of the death of Jones. (d) The actual financial condition of the corporation at the date of the death of Jones, as compared with previous dates during its existence. (e) What were the future prospects in a financial way of the corporation at the date of the death of Jones? What dividends had been paid during the year and at different periods of the corporation? In *re Jones Estate*, 155 N. E. 395. Herrick, Hopkins, Stockwell & Benesch, of Cleveland, for plaintiff in error. Edward C. Stanton, Pros. Atty., of Cleveland, opposed.

## Federal Tax Matters

Outstanding features of a few of the many interesting rulings and decisions from March 17 to April 17, in The Federal Tax Service of The Corporation Trust Company are briefly summarized here. The complete reports should be examined to determine the extent of their application. These decisions and rulings, it must also be remembered, are not necessarily final. The citations are all to the above named Service.

The gift tax imposed by the Revenue Act of 1924 is constitutional as an excise, although it imposes a retroactive tax on gifts completed prior to the passage of the Act (Bull. VI ('27)-11, p. 11).

Dividends on stock specifically bequeathed received by an estate during the period of settlement are taxable to the estate; the additional tax imposed by the Revenue Act of 1917 applies to an estate as an entity to the same extent that it is applicable to an individual; the rate of tax, in the case of the distributable income of an estate, is based in each case on the amount of the individual share to be distributed even though the exact amount of the individual share is not determinable prior to the end of the taxable period but is determined with substantial accuracy soon thereafter. Act of 1916-1917. United States District Court decision, District of Massachusetts

(Part 1, ¶4058). . . . A deceased member's share of commissions earned by a partnership prior to his death but collected thereafter, the value of such property right being included in the decedent member's gross estate for estate tax purposes is not likewise, when paid to the estate during process of settlement thereof, gross income to the estate, the books of account of the decedent and of his estate being on the cash receipts and disbursements basis. Act of 1918. United States Court of Claims decision (Part 1, ¶4093). . . . A loss resulting from the sale of a private residence built by the taxpayer and occupied by him for about fourteen years, all prior to March 1, 1913, then rented for about nineteen years, and then sold, is held to be deductible as being sustained in a transaction entered into for profit though not connected with a trade or business. Act of 1918. United States Circuit

Court of Appeals, Third Circuit (Part 1, ¶4121). . . . Distributions made by a corporation on liquidation out of earnings or profits accumulated since February 28, 1913, fall within the meaning of the term "dividend" and so the amount thereof is subject to surtax only, and not to normal tax as on a gain resulting from a sale or other disposition of the share stock. Act of 1918. United States Circuit Court of Appeals decision, Eighth Circuit (Part 1, ¶4124).

A corporation organized under State building and loan association laws, which has so far departed from the practices of such associations that by far the larger portion of its business is transacted with non-members, held to have forfeited its exemption from income taxes under section 231 (4) of the Revenue Acts of 1918 and 1921, and to be subject to taxes imposed by sections 230 and 301 of said Acts (Part 1, BTA Dec. 2301). . . . A corporation operating a grain elevator received for storage grain which it sold instead of storing it, and when the owners of the grain authorized its sale the corporation paid them the market price of the grain on the day the sale was authorized. When grain was received for storage the corporation set up on its books a liability to the owner in bushels but not in dollars. Held, that gain or loss did not arise until an obligation to pay for the grain arose (Part 1, BTA Dec. 2313). . . . Where the books of a bank are kept on the cash receipts and disbursements basis, bank discount neither earned nor received within the taxable year does not constitute income for that year (Part 1, BTA Dec. 2312). . . . Amounts paid by an individual for legal

services in the collection of a debt arising out of an ordinary business transaction are deductible from gross income in income-tax returns as ordinary and necessary expenses in computing net income under the Revenue Act of 1918 (Part 1, BTA Dec. 2349). . . . Amounts paid by a national bank on behalf of its stockholders for taxes assessed against them, constitute income to the stockholder, and the amount paid as taxes is deductible from gross income (Part 1, BTA Dec. 2361). . . . In determining gain or loss upon the sale of property the base should be reduced by the amount of depreciation sustained in prior years. It is immaterial in the year of a sale of property whether a deduction for depreciation is taken and the base reduced by that amount, or that the deduction be disallowed and the base left undisturbed. The result is the same in either event. 1921 Act (Part 1, BTA Dec. 2371). . . . Where under a contract a taxpayer becomes a partner in a business and agrees to pay for his interest out of his share of partnership earnings and gives his note therefor to the other partners, the amounts credited by the partnership to him and applied directly on the note are taxable income for the years in which they are so credited and applied (Part 1, BTA Dec. 2377). . . .

Under the Revenue Acts in determining the amounts available for dividends the corporate earnings of the entire year should be taken as a unit (Bull. VI ('27)-12, p. 2). . . . Where four affiliated corporations elected to file separate returns for the taxable year 1924, returns for the taxable year 1925 must be made upon the same basis

where permission to file a consolidated return was not granted by the Commissioner. For the taxable year 1926 the members of the affiliated group may elect to file a consolidated return under the provisions of article 632, Regulations 69. (Bull. VI ('27)-12, p. 2). . . . The M Company, after a dividend distribution to its stockholders, transferred its remaining assets to the S Company for stock in that company, which it distributed to its stockholders without requiring them to surrender their stock in the M Company. Held, there was a reorganization, and under section 203 (c) of the Revenue Act of 1926 no gain to the M Company stockholders resulted from the receipt by them of the S Company stock. The basis of the M Company stock should be apportioned between such stock and the S Company stock (Bull. VI ('27)-13, p. 2). . . . Article 1304 of Regulations 69 amended as to claims for refund by taxpayers (Part 1, ¶4055). . . . A corporation keeping its accounts on an accrual basis will not be permitted to deduct from gross income a sum in anticipation of the amount the corporation may be required to allow as cash discount on accounts due and payable in the succeeding year. Acts of 1918 and 1921. (Bull. VI ('27)-13, p. 9). . . . The continuance of the installment basis for 1926 and subsequent years is not required in all cases where a taxpayer, a dealer in personal property, exercises the privilege provided in article 42, Regulations 69, of filing amended returns on the installment basis for

years prior to 1926 (Bull. VI ('27)-14, p. 2). . . . A trust the income of which is to accumulate for thirty years, no interest remaining in the trustor, is held not to be a trust intended to take effect in possession or enjoyment after death though at the time of the creation of the trust the grantor had a life expectancy of but sixteen years. Act of 1918. United States Supreme Court decision (Part 2, Estate Tax, ¶777). . . . Certificates of stock of domestic corporations deposited by a non-resident in and transferred by him to the British treasury for which he received treasury warrants, which certificates were in the United States at the time of the nonresident's death having been transferred on the respective corporations' books to the name of domestic bankers acting as agents of the British treasury, were not "owned and held" by the nonresident, and the value thereof was improperly included in his gross estate subject to tax. Act of 1916. United States Court of Claims decision (Part 2, Estate Tax, ¶810). . . . Where a son's life-estate in personalty bequeathed to charity ends prior to the determination of the decedent's net estate the actual value of the life-estate rather than the theoretical life-expectancy mortuary-table value should be used to determine the present value of the charitable bequest deductible from the decedent's gross estate. Act of 1918. United States District Court decision, District of Massachusetts (Part 2, Estate Tax, ¶828).

## Notes

The newly revised Index of The Federal Trade Commission Service,

just issued, brings out some interesting facts regarding the activities

of the Commission. The "Index to Complaints by Names of Respondents" shows the astonishing total of 2,527 different individuals, firms and associations so far proceeded against by formal complaint. In the "Index to Complaints by Practices Complained Of" 134 different business practices are shown to have been thus far the objects of the Commission's complaints, falling under the 16 general groups of Advertising, Boycotting, Bribery (commercial), Competitors (practices directly against) Mail Order Houses, Manufacturer (falsely claiming to be), Misrepresentation of Goods, Misrepresentation of Plant, Monopolies, Names, Patents, Price, Purchasing Methods, Selling Methods, Simulation, Trade Association Methods. The "Index to Complaints by Businesses Engaged in by Respondents" shows that the complaints already issued involve 381 different lines of business.

For carrying out the Delaware, Lackawanna & Western Railroad Company's announced plan for distribution of certain assets to its stockholders, which aroused so much interest a few weeks ago, a Delaware corporation has been organized under the name of the Lackawanna Securities Corporation,

with a capitalization of 844,411 shares without par value. Incorporating details in Delaware were handled for counsel by The Corporation Trust Company.

A certificate of incorporation of The New York Telegram Corporation was filed by The Corporation Trust Company at Albany, New York, on April 6, for the syndicate which recently purchased The Telegram from the estate of the late Frank Munsey. The capitalization of the new company is 10,000 shares of common voting stock, and 40,000 shares of Class A common stock, all shares being without par value.

The name of The Texas Company of Delaware was changed to The Texas Company, and its capital increased to \$150,000,000, divided into 6,000,000 shares, par value \$25 each, by an amendment filed for the Company's attorneys by The Corporation Trust Company on April 13.

475 corporations were organized under the laws of Delaware from March 20 to April 20, as against 424 for the preceding 30-day period, and 439 for the corresponding period of one year ago.

## Some Important Matters for May and June

This calendar does not purport to cover general taxes or reports to other than state officials, nor those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ARIZONA—Report to Corporation Commission and Registration Fee due during June. Domestic and Foreign Corporations.

- CALIFORNIA—Corporation Franchise Tax due on first Monday in July—Domestic and Foreign Corporations.
- DELAWARE—Annual Franchise Tax due between April 1 and before July 1—Domestic Corporations.
- DOMINION OF CANADA—Annual Summary due between April 1 and June 1—Domestic companies having capital stock.
- ILLINOIS—Annual License Fee or Franchise Tax due on or before July 1 but may be paid up to July 31 without penalty—Domestic and Foreign corporations.
- IOWA—Annual Report due between the first day of July and the first day of August—Domestic and Foreign Corporations. Additional statement due at the time of making the Annual Report in July—Foreign Corporations.
- MAINE—Annual Tax Return due on or before June 1—Domestic Corporations.
- MONTANA—Annual Report due in April or May—Foreign Corporations. Annual License Tax based on Net Income due between June 1 and June 15—Domestic and Foreign Corporations.
- NEBRASKA—Annual Report and Fee due on or before July 1—Domestic Corporations.
- NEVADA—Annual List of Officers due on or before July 1—Domestic and Foreign Corporations.
- NEW JERSEY—Annual Tax Return due on or before first Tuesday of May—Domestic Corporations.
- NEW YORK—Annual Return of Net Income on or before July 1—Domestic and Foreign Business Corporations.
- NORTH CAROLINA—Capital Stock Report to determine amount of franchise tax due between May 1 and July 1—Domestic and Foreign Corporations.
- OREGON—Annual Statement due during June—Domestic and Foreign Corporations.
- RHODE ISLAND—Corporate Excess Tax due on or before first day of July—Domestic and Foreign Corporations.
- TENNESSEE—Annual Report and Franchise Tax due on or before July 1—Domestic and Foreign Corporations.
- UNITED STATES—Second Installment Income Tax due June 15—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.
- WASHINGTON—License Tax due on or before July 1—Domestic and Foreign Corporations.
- WEST VIRGINIA—Tax statements due on or before July 1—Domestic Corporations. Annual License Tax due on or before July 1—Domestic and Foreign Corporations. Fee to State Auditor as Attorney in Fact due on or before June 30—Foreign and Non-Resident Domestic Corporations.
- WYOMING—Annual sworn statement and license tax due on or before July 1—Domestic and Foreign Corporations.



## The Corporation Trust Company's Supplementary Literature

*In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:*

- Analysis of Recent Amendments to Delaware Corporation Laws.** Complete text of these important new features together with explanation of their effect.
- What Constitutes Doing Business.** A 128-page pamphlet containing brief digests of 301 decisions selected from those in the various states as indicating what is construed in each state as "doing business."
- Six Points to Watch in Incorporation.** A valuable reminder for attorneys when planning a corporate structure or drafting incorporation papers.
- Two Notable Certificates of Incorporation.** Certificate of Standard Oil Company of California, and that of Tide Water Associated Oil Company.
- Safeguarding Stock Transfers.** Dealing with the many pitfalls in transferring stock on a corporation's books.
- Delaware Corporations.**—Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.
- Shares Without Par Value.** Explains some of the advantages of such shares and presents brief synopses of the statutory provisions for issue in the 39 states in which they are authorized.
- Paying Too Much in Taxes.** Shows how taxpayers may unwittingly make themselves liable for more income tax than is necessary.
- When You Want to be Right About Any Federal Tax Question.** A 16-page pamphlet explaining how to find the complete information about any Federal tax question by means of The Federal Tax Service of The Corporation Trust Company.
- When Doing Business Is Illegal.** A brief discussion, illustrated by many actual examples taken from the court records of various states, of the difference between "Interstate" and "Intrastate" business.
- Revenue Act of 1926.** A reprint of the law as furnished to subscribers to The Federal Tax Service of this Company.
- Amendments to New Jersey Corporation Laws.** Full text of the ten amendments passed at the legislative session of 1927.
- Transfer Requirements Chart.** This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfers are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.
- Lawyers' Preliminary Work Sheets.** Large sheets for the double purpose of reminding counsel of all the various points on which he may need information from his client before starting the preparation of incorporation papers, and furnishing a convenient medium on which to record such information in rough but systematic form for later reference.



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In the transfer of securities belonging to a decedent's estate, or in transfers by a guardian, trustee, committee for incompetent, receiver—in fact in all irregular transfers—The Corporation Trust Company saves counsel incalculable trouble and delay in procuring, preparing and presenting the required documents, and, by effecting speedier transfers, reduces

the danger of losses through fluctuation of values.

We take over the entire burden of procuring all necessary waivers or other documents needed, no matter what state requirements (or requirements of Canadian provinces) are involved, of putting them in proper form for the transfer agent, presenting to the latter and procuring new certificates made out as instructed.

When you have an estate to be settled in which the transfer of corporate securities is involved, or other affairs to be handled in which transfers of an irregular nature are included, submit a list of the securities to this company and an estimate on the cost of the complete service will gladly be furnished you.

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120 Broadway, New York

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